

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-185

August 10, 2000

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Retail Electric Transmission
Services and Jurisdictional Issue

ORDER APPROVING
STIPULATION
(BANGOR HYDRO-
ELECTRIC COMPANY)

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we approve a Stipulation submitted to us by Bangor Hydro-Electric Company (BHE or Company) and the Office of the Public Advocate (OPA) which resolves all transmission-related issues as they pertain to BHE as a result of Maine's implementation of retail access to generation services. Specifically, the Stipulation separates BHE's overall T&D revenue requirement of \$103,186,698 into a transmission component of \$11,356,276 and a distribution component of \$11,356,276 which includes stranded costs. The Stipulation also provides that any increase to retail transmission rates resulting from the Company's filing at the Federal Energy Regulatory Commission (FERC) for new transmission rates effective June 1, 2000 will be offset by a decrease in distribution rates accomplished by accelerating the amortization of the value in the Company's Asset Sale Gain Account.

II. PROCEDURAL BACKGROUND

Effective March 1, 2000, through its enactment of the Electric Restructuring Act, 35-A M.R.S.A. §§ 3201-3214 *et. seq.*, the Maine Legislature, deregulated generation services and provided Maine consumers with direct access to generation services. Prior to the onset of retail access and pursuant to the requirements of 35-A M.R.S.A. § 3208, the Commission concluded an investigation of the Transmission and Distribution (T&D) utility revenue requirements and the stranded costs for Bangor Hydro-Electric Company. See *Public Utilities Commission, Investigation of Stranded Cost Recovery, Transmission and Distribution Utility Revenue Requirements and Rate Design of Bangor Hydro-Electric Company (Phase II)*, Docket No. 97-596, Order (Feb. 29, 2000). In that Order, we established an overall T&D revenue requirement for BHE, including stranded costs, of \$103,186,698.

After careful review, we have concluded that FERC has, through its Order No. 888, clearly asserted jurisdiction over retail transmission services when a state elected to unbundled electric supply and allow retail customers access to generation services on a competitive basis. *Public Utilities Commission, Investigation of Central Maine Power Company's Stranded Costs, Transmission and Distribution Utility Revenue*

Requirement and Rate Design, Docket No. 97-580, Order at 133 (March 19, 1999). Therefore, on March 30, 1999, we initiated this docket to investigate issues involving the jurisdictional split between FERC-regulated transmission facilities and state-regulated distribution facilities.¹

On July 19, 1999, the Company filed its proposed classification of transmission and distribution facilities. The Company's proposal was modified by the pre-filed testimony of Mark Colca which proposed reclassifying certain distribution facilities as transmission to eliminate the potential that wholesale customers would be forced to pay a supplemental charge for the use of such facilities.

In a Procedural Order dated December 7, 1999, the Examiner in this case noted that:

[T]here appears to be general agreement that we should move to completely separate transmission costs from the state-jurisdictional revenue requirements. However, there is also agreement that sufficient time does not exist for this to occur by March 1, 2000. Accordingly, the Commission will use this investigation to determine the costs appropriately considered distribution-related.²

On February 25, 2000, BHE made its cost separations filing with the Commission. The Company's filing was the subject of both formal and informal discovery. On May 22, 2000, we received a Stipulation (attached and incorporated into this Order as Attachment 1) signed by the Company and the OPA which resolved all issues in this case as they pertain to Bangor-Hydro. All other intervenors who expressed interest in the issues in this case as they pertained to BHE (the Industrial Energy Consumers Group, Great Northern Paper Company, and the Independent Energy Producers of Maine) have indicated that they do not object to the proposed Stipulation.

III. DESCRIPTION OF THE STIPULATION

BHE and OPA agree that the total T&D revenue requirement of \$103,186,698 should be separated into a distribution, or "D," revenue requirement of \$91,830,422 and a transmission revenue requirement of \$11,356,276. Based upon the rate formula filed

¹This investigation was initiated as a generic investigation and subsequently developed into an investigation of the transmission costs and issues for each of the state's investor-owned utilities including BHE.

²While BHE filed transmission tariffs with FERC to be effective on March 1, 2000, the distribution rates were calculated on a residual basis so that total T&D rates equaled the rates set by this Commission in Docket No. 97-596.

at the FERC by the Company, and which took effect on June 1, 2000, the Company estimated that the effective retail transmission rate increase compared to the amount of transmission costs separated from the combined T&D rate would be \$2,444,758. The Company estimates, however, that with corrections to the formula, which have been accepted by the Company and are expected to be accepted by FERC, the increase will be approximately \$2 million, rather than the \$2.44 million as originally filed.

The parties to the Stipulation agree that given rate stability concerns, such an increase to retail rates so shortly after the onset of electric restructuring would be inappropriate. The parties thus agreed to accelerate the amortization of the Company's Asset Sale Gain Account by a sufficient amount to offset the \$2.4 million increase filed by the Company. In addition, once the actual increase for this year is agreed to, including the return of any over-collections, the amortization will be adjusted appropriately to retain total rates and total revenue requirements at the level approved by the Commission in Docket No. 97-596.

IV. DECISION

As stated in past cases, in deciding whether to approve a stipulation we apply the following criteria:

1. whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement; and
2. whether the process that led to the stipulation was fair to all parties; and
3. whether the stipulated result is reasonable and is not contrary to legislative mandate.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C.) Jan. 10, 1995, and *Maine Public Service Company, Proposed Increase in Rates (Rate Design)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets all of the above criteria.

The Stipulation was entered into by the Company and the OPA after numerous technical and settlement conferences. The non-signing parties to this matter had a full opportunity to participate in these conferences and do not object to the Stipulation. We, therefore, find that both criteria 1 and 2, set forth above, have been satisfied.

We also find that the stipulated result is reasonable and is both consistent with the public interest and legislative mandates. By accelerating the amortization of the

Asset Sale Gain Account, the Stipulation provides rate stability to customers and avoids rate increases immediately following the onset of retail access. We believe this result as well as all other provisions of the Stipulation are wholly consistent with our restructuring objectives enunciated in past cases. See *Docket No. 97-596 (Phase I)* at 74.

Accordingly, it is

O R D E R E D

1. That the Stipulation submitted by Bangor Hydro-Electric Company and the Public Advocate, dated May 22, 2000 is approved;
2. That the classification of transmission and distribution facilities using the FERC "seven factor" test agreed to in the Stipulation is approved;
3. That BHE is authorized to accelerate the amortization of its Asset Sale Gain Account by an amount sufficient to offset any increase in transmission rates approved by FERC in Docket No. ER00-980-000.

Dated at Augusta, Maine, this 10th day of August, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.